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15 Attorneys for Defendant

16 NORTHWEST AIRLINES CORPORATION

17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 **ROSEMARY D'AUGUSTA, CAROLYN  
20 FJORD; SHARON HOLMES; DEBORAH M.  
21 and STEVEN J. PULFER; JOHN LOVELL;  
22 GABE GARAVANIAN; JOSE M. BRITO;  
23 SONDRA K. RUSSELL; ANNETTE M.  
24 TIPPETTS; SHERRY LYNNE STEWART;  
25 ROBERT A. ROSENTHAL; LEE B. and  
26 LISA R. MCCARTHY; JUNE STANSBURY;  
27 KEITH DEAN BRADT; DONALD and  
28 DONNA FRY; GARY TALEWSKY; DIANA  
LYNN ULTICAN; PATRICIA A.  
MEEUWSEN; ROBERT D. CONWAY;  
MICHAEL C. MALANEY; Y. JOCELYN  
GARDNER; CLYDE D. STENSRUD;  
DONNA M. JOHNSON; VALARIE JOLLY;  
and PAMELA S. WARD,**

Plaintiffs,

v.

**NORTHWEST AIRLINES CORPORATION  
and DELTA AIRLINES, INC.,**

Defendants.

Case No. 3:08-CV-3007-VRW

**ANSWER OF DEFENDANT  
NORTHWEST AIRLINES  
CORPORATION**

The Honorable Vaughn R. Walker

Defendant Northwest Airlines Corporation (“Northwest”) by and through its attorneys, admits, denies, and states as follows:

Northwest is without knowledge or information sufficient to form a belief as to the truth of the allegation that Plaintiffs are direct purchasers of airline tickets from Northwest and/or defendant Delta Airlines, Inc. (“Delta”) and, on that basis, Northwest denies the same. Northwest admits that Plaintiffs purport to bring this action under Sections 7 and 16 of the Clayton Antitrust Act, 15 U.S.C. §§ 18, 26, to enjoin the merger of Northwest and Delta. Except as otherwise expressly admitted, Northwest denies each and every allegation contained in the first unnumbered paragraph of the Complaint.

## **INTRODUCTION**

1. Northwest admits that on April 14, 2008 it and Delta announced that they had agreed to combine in an all-stock transaction to create a single airline to be operated under the Delta name. To the extent the allegations contained in Paragraph 1 of the Complaint are legal conclusions, no response is required. Northwest is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 1 of the Complaint. Except as otherwise expressly admitted, Northwest denies each and every allegation contained in Paragraph 1 of the Complaint.

## **JURISDICTION**

2. Northwest admits that Plaintiffs purport to bring this action under Section 16 of the Clayton Antitrust Act, 15 U.S.C. §§ 18, 26. Northwest also admits that this Court has subject matter jurisdiction pursuant to 15 U.S.C. § 26 and 28 U.S.C. §§ 1331, 1337. Except as otherwise expressly admitted, Northwest denies each and every allegation contained in Paragraph 2 of the Complaint.

## **THE PARTIES**

3. Northwest is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint, and on that basis denies each and every allegation contained therein.

1       4. Northwest admits that it is a corporation incorporated under the laws of the  
2 State of Delaware with its principal place of business in Eagan, Minnesota, and that it is  
3 the direct parent corporation of Northwest Airlines, Inc. Northwest also admits that it is  
4 engaged in the business of transporting passengers and cargo and that it began operations  
5 in 1926. Northwest further admits that its business includes domestic hubs at Detroit,  
6 Minneapolis/St. Paul, and Memphis. Except as otherwise expressly admitted, Northwest  
7 denies each and every allegation contained in Paragraph 4 of the Complaint.

8        5.        Northwest admits that Delta is a corporation incorporated under the laws of  
9 the State of Delaware with its principal place of business in Atlanta, Georgia. Northwest  
10 also admits that Delta provides scheduled transportation for passengers and cargo in the  
11 United States and elsewhere in the world using hubs in Atlanta, Cincinnati, New York-  
12 JFK, and Salt Lake City. Northwest further admits that Delta hub operations enable  
13 customers to connect flights between Delta hubs and other locations. Northwest is  
14 without knowledge or information sufficient to form a belief as to the truth of the  
15 remaining allegations contained in Paragraph 5 of the Complaint, and on that basis denies  
16 those allegations. Except as otherwise expressly admitted, Northwest denies each and  
17 every allegation contained in Paragraph 5 of the Complaint.

## **NATURE OF TRADE AND COMMERCE**

19       6.       The totality of the allegations contained in Paragraph 6 of the Complaint  
20 state a legal conclusion to which no response is required. Except as so stated, Northwest  
21 denies each and every allegation contained in Paragraph 6 of the Complaint.

22       7.     Northwest admits that it competes with Delta to provide passenger service.  
23 Except as otherwise expressly admitted, Northwest denies each and every allegation  
24 contained in Paragraph 7 of the Complaint.

25 8. Northwest admits the allegations contained in Paragraph 8 of the  
26 Complaint.

27 9. Northwest denies the allegations contained in Paragraph 9 of the Complaint.

## **CONDUCT GIVING RISE TO VIOLATIONS OF LAW**

2       10. Northwest states that on April 14, 2008 it and Delta issued a press release  
3 announcing an agreement to combine in an all-stock transaction with a combined  
4 enterprise value of \$17.7 billion. The press release made reference to the content of the  
5 remainder of the allegations contained in Paragraph 10 of the Complaint. The press  
6 release speaks for itself and is the best evidence of its content. Except as otherwise  
7 expressly stated in the press release, Northwest denies each and every allegation contained  
8 in Paragraph 10 of the Complaint.

9        11. Northwest admits that its Chief Executive Officer, Douglas Steenland, and  
10      Delta's Chief Executive Officer, Richard Anderson, were involved in discussions between  
11      Northwest and Delta leading up to the agreement to enter into the merger. Northwest also  
12      admits these discussions were intended to be confidential until the stock transaction was  
13      announced. Northwest further admits that Mr. Anderson was formerly employed by  
14      Northwest during a time period when Mr. Steenland also was employed by Northwest.  
15      Northwest is without knowledge or information sufficient to form a belief as to the truth  
16      of the remaining allegations contained in Paragraph 11 of the Complaint, and on that basis  
17      denies those allegations. Except as otherwise expressly admitted, Northwest denies each  
18      and every allegation contained in Paragraph 11 of the Complaint.

19       12. Northwest states that on April 14, 2008 it and Delta issued a press release  
20 that made reference to the content of the allegations contained in Paragraph 12 of the  
21 Complaint. The press release speaks for itself and is the best evidence of its content.  
22 Except as otherwise expressly stated in the press release, Northwest denies each and every  
23 allegation contained in Paragraph 12 of the Complaint.

24        13. Northwest admits that the allegations contained in Paragraph 13 of the  
25 Complaint purport to provide data from the United States Department of Transportation.  
26 Northwest is without knowledge or information sufficient to form a belief as to the either  
27 the accuracy of the alleged data from the United States Department of Transportation or  
28 the truth of the remaining allegations contained in Paragraph 13 of the Complaint.

1 Except as otherwise expressly admitted, Northwest denies each and every allegation  
2 contained in Paragraph 13 of the Complaint.

3 14. Northwest denies the allegations contained in Paragraph 14 of the  
4 Complaint.

5 15. Northwest denies the allegations contained in Paragraph 15 of the  
6 Complaint.

7 16. Northwest admits that Southwest and Jet Blue are major competitors that  
8 compete with each other as well as Northwest and Delta. Except as otherwise expressly  
9 admitted, Northwest denies each and every allegation contained in Paragraph 16 of the  
10 Complaint.

11 17. Northwest denies the allegations contained in Paragraph 17 of the  
12 Complaint.

13 18. Northwest denies the allegations contained in Paragraph 18 of the  
14 Complaint.

15 19. Northwest is without knowledge or information sufficient to form a belief  
16 as to the accuracy of the allegations contained in Paragraph 19, except to state that it is  
17 aware that United States Representative James Oberstar (D-Minn.) has reportedly made  
18 some public statements concerning the merger of Northwest and Delta. Except as  
19 otherwise expressly admitted, Northwest denies each and every allegation contained in  
20 Paragraph 19 of the Complaint.

21 20. Northwest denies the allegations contained in Paragraph 20 of the  
22 Complaint.

23 21. Northwest admits that Plaintiffs purport to bring this action seeking both  
24 preliminary and permanent injunctive relief, but Northwest denies the basis upon which  
25 Plaintiffs' seek relief. Except as otherwise expressly admitted, Northwest denies each and  
26 every allegation contained in Paragraph 21 of the Complaint.

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**VIOLATION ALLEGED****Clayton Act, Section 7**

22. Northwest denies the allegations contained in Paragraph 22 of the  
Complaint.

**PRAYER FOR RELIEF**

6 In response to Plaintiffs' "Prayer for Relief," Northwest denies that  
7 Plaintiffs are entitled to any relief on the purported claims alleged in the Complaint.

9 Each and every allegation not expressly admitted by Northwest is hereby  
10 denied.

**AFFIRMATIVE DEFENSES**

12 Northwest reserves the right to assert any and all applicable defenses to  
13 Plaintiffs' claims. Northwest has not yet obtained adequate discovery from Plaintiffs or  
14 others in connection with this action, and Northwest therefore reserves the right to amend  
15 or otherwise supplement this pleading. Without limiting the generality of the foregoing  
16 and without regard to whether defenses set forth below are affirmative defenses within the  
17 meaning of Federal Rule of Civil Procedure 8(c), and without conceding that any such  
18 defenses must be set forth in its answer or assuming any burden of proof that it would not  
19 otherwise bear, Northwest states as follows:

**FIRST DEFENSE**

21 The Complaint fails to state a claim upon which relief can be granted  
22 against Northwest.

**SECOND DEFENSE**

24 Plaintiffs lack standing to bring or maintain the claims raised in the  
25 Complaint because they are unlikely to sustain any cognizable antitrust injury attributable  
26 to or proximately caused by Northwest's conduct.

**THIRD DEFENSE**

28 Northwest adopts by reference any defense, not otherwise expressly set

1 forth herein, that is pleaded by any other defendant in this action.

2 Northwest specifically gives notice that it intends to rely upon such other  
3 defenses as may become available by law, or pursuant to statute, or during any further  
4 discovery proceedings of this case, and hereby reserves the right to amend its Answer and  
5 assert such defenses.

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Dated: July 15, 2008

8 MICHAEL F. TUBACH  
9 O'MELVENY & MYERS LLP

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By: /s/ Michael F. Tubach

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CORPORATION

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